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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9 IN RE THE MATTER OF ENFORCEMENT
10 ACTION AGAINST

PDC CASE NO. 06-015

FINAL ORDER

11 Angel Kavanaugh,

12 Respondent.
13

14 The Washington State Public Disclosure Commission (Commission) conducted an
15 adjudicative proceeding (enforcement hearing) in this matter on October 27, 2005-at the
16 Commission Offices at the Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia,
17 Washington. The hearing was held pursuant to chapter 34.05 RCW, chapter 42.17 RCW,
18 WAC 390-37, and WAC 10-08. The Commissioners present included: Earl Tilly, Chair; Jane
19 Noland, Vice Chair; Bill Brumsickle, Secretary; Mike Connelly; and, Ken Schellberg. Senior
20 Counsel Nancy Krier, Commission counsel, was also present. Also present was Vicki Rippie,
21 PDC Executive Director.

22 Appearing for the PDC staff were: Assistant Attorney General H. Bruce Marvin and
23 PDC staff member Tony Perkins, Political Finance Specialist 2.

24 The Respondent Angel Kavanaugh was present and appeared *pro se*.

25 The proceedings were recorded. The proceedings were open to the public.
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1 The hearing concerned PDC Staff allegations that the Respondent, a candidate for the
2 Hoquiam City Council in 2005, violated RCW 42.17.510 by failing to identify herself as the
3 sponsor of political advertising. PDC Staff also alleged that the Respondent violated RCW
4 42.17.120 by concealing campaign expenditures for political advertising when she failed to
5 identify herself as the sponsor and falsely implied that the advertising had been sponsored by
6 someone else, in this case, her opponent Kyla Houchens. The political advertising at issue was
7 campaign postcards to voters.

8 I. PREHEARING PROCEDURAL MATTERS

9 *Request for Continuance.* A telephonic prehearing conference was held with the Chair
10 on October 21, 2005 to address Respondent's request for a continuance from the scheduled
11 hearing date and time (October 27, 2005 at 2:00 p.m.). Following the conference, an order was
12 entered October 25, 2005 ("Prehearing Conference Order and Confirmation of Consideration
13 of Respondent's Objection"). The continuance was denied. The Respondent objected to the
14 denial in a statement received by the PDC on October 24, 2005 (Respondent's Statement –
15 Exhibit R-7). On October 27, 2005, the Commission considered the Respondent's objection
16 and the arguments of the parties, with the Respondent participating by telephone. The
17 Commission determined the hearing would proceed on October 27, 2005 but would begin at
18 3:30 p.m. to enable the Respondent to participate in person.

19 Other prehearing matters were addressed on October 27, 2005 prior to the hearing.

20 Those included:

21 *Stipulation.* A proposed Stipulation as to Facts (Stipulation) dated October 26, 2005
22 was offered by the parties. The Commission unanimously accepted the Stipulation. A copy of
23 the Stipulation is attached to this Order and incorporated by reference.

24 *Exhibits.* A number of the parties' exhibits were admitted through stipulation of the
25 parties prior to the hearing as provided on the parties' Exhibit List dated October 26, 2005
26 (Exhibit List). The Commission accepted the stipulated exhibits described in the Exhibit List.

1 The remaining exhibits (those not stipulated to by the parties) were admitted during the course
2 of the hearing. The final exhibits admitted were PDC Staff Exhibits S-1 and S-2 with
3 attachments, and Respondent's Exhibits R-1 through R-8.

4 **II. HEARING**

5 Argument Considered

6 The Commission considered the oral arguments of the parties and the written Statement
7 of the Respondent received October 24, 2005 (R-7).

8 Evidence Considered

9 The Commission considered the written and oral evidence offered by the parties. That
10 evidence included the Stipulation, the written exhibits as stipulated to and/or otherwise
11 admitted for entry, and the testimony of witnesses, as follows:

12 *Stipulation:* Stipulation as to Facts dated October 26, 2005.

13 *Exhibits:* PDC Staff exhibits S-1 and S-2 with attachments; and Respondent's exhibits
14 R-1 through R-8.

15 *Testimony:* The Commission considered the testimony of the following persons.
16 For the PDC Staff – Tony Perkins, Political Finance Specialist 2; Debra Gerchak, Staples
17 Office Supply employee; Stephanie Eliason, Staples Office Supply employee.
18 For Respondent – the Respondent testified in her own behalf.

19 Based upon the consideration of the above evidence and arguments, the Commission
20 makes the following findings and conclusions:

21 **III. FINDINGS OF FACT**

22 1.- 9. All facts stipulated to in the Stipulation will be designated as Findings of Fact 1
23 – 9.

24 10. The Commission finds that the testimony of the employees of Staples Office Supply
25 (Ms. Gerchak and Ms. Eliason) is key evidence. They testified as to their recollection of and
26 recognition of the Respondent. They testified that they recalled that the Respondent ordered,

1 confirmed, paid for and picked up the postcards at issue (the "Kyla Houchens postcard") from
2 Staples. They testified as to their email, telephone and in-person contacts with the Respondent
3 regarding her ordering, payment and pick-up of the postcards, as well as address labels for the
4 postcards.

5 11. While the Respondent denied involvement in the postcard order, procurement,
6 payment and distribution activities, the Commission finds that the testimony of Ms. Gerchak
7 and Ms. Eliason is more credible than the testimony and statements of the Respondent
8 regarding Respondent's actions concerning the ordering of, payment for and pick-up of the
9 postcards and address labels. Their testimony is also corroborated by other evidence including:
10 (a) the placement of the order from the Respondent at her stipulated email address to Staples;
11 (b) the confirming telephone call from Staples staff to Respondent at what has been stipulated
12 to as Respondent's cell phone number; and, (c) the invoice documenting the purchase by the
13 Respondent of the postcards and address. The Commission also finds there is no evidence of
14 bias or prejudice by Ms. Gerchak or Ms. Eliason or other reason to question their truthfulness.

15 12. The Commission finds that the Respondent did place the order for, purchase, and
16 pick-up the postcards and address labels at issue, and did circulate the postcards at issue.

17 13. The Respondent was not identified as the sponsor of the postcard, and the
18 postcards reflected instead that they were being sent by Kyla Houchens. The Commission
19 finds that the Respondent intentionally attempted to and did conceal her identity as the sponsor
20 of the campaign postcards at issue in this case. This finding is based upon the evidence,
21 including: (a) Respondent's testimony; (b) the fact that she used a different Staples reward card
22 with her former name as part of the postcard payment transaction and that card was different
23 from what she normally used for other purchases at Staples in the last year and a half; and, (c)
24 that her payments for the postcards at issue in this case were made in cash whereas the
25 Respondent made most other Staples payments with her VISA credit card.

1 **IV. CONCLUSIONS OF LAW**

2 1. The Commission has jurisdiction to hear this matter pursuant to RCW 42.17.350 et
3 seq., including RCW 42.17.370(5).

4 2. The PDC staff has the burden to establish a violation by the Respondent of
5 RCW 42.17 by a preponderance of the evidence.

6 3. The Commission unanimously concludes that the Respondent violated RCW
7 42.17.510 by failing to identify herself as the sponsor of political advertising.

8 4. The Commission unanimously concludes that the Respondent violated RCW
9 42.17.120 by concealing campaign expenditures for political advertising when she failed to
10 identify herself as the sponsor and falsely implied that the advertising had been sponsored by
11 someone else.

12
13 Based upon the above findings and conclusions Commission therefore assesses the following
14 penalty, and authorizes the Executive Director to sign this order on its behalf.

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16 **V. PENALTY AND ORDER**

17 The Commission imposes a penalty of \$2,500 against the Respondent.

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19 **VI. APPEALS**

20 **RECONSIDERATION OF FINAL ORDER - COMMISSION**

21 Any party may ask the Commission to reconsider this final order. Parties must place
22 their requests for reconsideration in writing, include the specific grounds or reasons for the
23 request, and deliver the request to the Public Disclosure Commission Office within
24 **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order
25 upon the party. WAC 390-37-150. Service by the Commission on a party is accomplished on
26

1 the date of mailing by U.S. mail if the order is mailed, or the date of personal service if
2 personal service is made. RCW 34.05.010(19). The Commission orders are generally mailed
3 via U.S. mail.

4 Pursuant to WAC 390-37-150, the Public Disclosure Commission is deemed to have
5 denied the petition for reconsideration if, within twenty (20) business days from the date the
6 petition is filed, the Commission does not either dispose of the petition or serve the parties with
7 written notice specifying the date by which it will act on the petition. Pursuant to RCW
8 34.05.470(5), the Respondent is not required to ask the Public Disclosure Commission to
9 reconsider the final order before seeking judicial review by a superior court.
10

11 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

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13 Pursuant to RCW 42.17.395(5), a **final order** issued by the Public Disclosure
14 Commission is subject to judicial review under the Administrative Procedure Act, chapter
15 34.05 RCW. The procedures are provided in RCW 34.05.510 - .598. Pursuant to RCW
16 34.05.542(2), a petition for judicial review must be filed with the superior court in Thurston
17 County or the petitioner's county of residence or principal place of business. The petition for
18 judicial review must be served on the Public Disclosure Commission and any other parties
19 within **30 days** of the date that the Public Disclosure Commission serves this final order on the
20 parties. RCW 34.05.542 (4) provides: "Service of the petition on the agency shall be by
21 delivery of a copy of the petition to the office of the director, or other chief administrative
22 officer or chairperson of the agency, at the principal office of the agency. Service of a copy by
23 mail upon the other parties of record and the office of the attorney general shall be deemed
24 complete upon deposit in the United States mail, as evidenced by the postmark."
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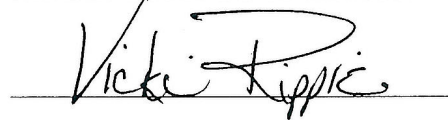
1 If reconsideration is properly sought, the petition for judicial review must be served on
2 the Public Disclosure Commission and any other parties within thirty (30) days after the
3 Commission acts on the petition for reconsideration.

4 **ENFORCEMENT OF FINAL ORDERS**

5 The Commission will seek to enforce this final order in superior court under RCW
6 42.17.395-.397, and recover legal costs and attorney's fees, if the penalty remains unpaid and
7 no petition for judicial review has been filed under chapter 34.05 RCW. This action will be
8 taken without further order by the Commission.
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10
11 So ORDERED this 17th day of November, 2005.

12 WASHINGTON STATE PUBLIC
13 DISCLOSURE COMMISSION

14 

15 VICKI RIPPIE
16 Executive Director

17 Attachment: Stipulation as to Facts dated October 26, 2005
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19 *MAILING DATE OF THIS ORDER:*
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21 _____
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23 Copies of this Order mailed to:

24 Angel Kavanaugh, Respondent
25 H. Bruce Marvin, Assistant Attorney General
26 Nancy Krier, Senior Counsel